REBECCA J. WATERS

IBLA 77-68 Decided February 4, 1977

Appeal from decision of the New Mexico State Office, Bureau of Land Management, dated November 9, 1976, rejecting oil and gas lease offer NM 28504.

Set aside and remanded.

1. Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents--Oil and Gas Leases: Applications: Drawings-- Words and Phrases

   "Agent." The word "agent," as used in 43 CFR 3102.6-1 requiring statements of authority and disclosure of interests in oil and gas lease offers by agents, does not include a son who has no discretionary authority and merely acts as his mother's amanuensis in affixing her signature on a simultaneous oil and gas lease offer entry card. Therefore, no further statement is required by the Bureau of Land Management to establish whether or not the son was an agent within the meaning of 43 CFR 3102.6-1.

2. Oil and Gas Leases: Applications: Generally

   An oil and gas lease entry card may be validly signed by the offeror's son where the offeror is an elderly woman who at times is incapable of making her own signature and it is her intention that the son's signing of her name be treated as if it were her own signature.

APPEARANCES: Rebecca J. Waters, pro se.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Rebecca J. Waters has appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated November 9, 1976, which rejected her oil and gas lease offer NM 28504.

The record shows that the simultaneously-filed drawing entry card of Rebecca J. Waters was drawn first by the New Mexico State Office, BLM, in the drawing held July 12, 1976, to determine the priority for awarding an oil and gas lease covering parcel No. NM 863 (NM 28504). On July 21, 1976, when the State Office received a request for an assignment of record title of this lease from Rebecca J. Waters to Max Wilson, Inc., BLM personnel detected a difference in the signatures of Rebecca J. Waters from the assignment and the original lease entry card.

On October 1, 1976, William Waters, the offeror's son, called the BLM's Minerals Section to inquire of the status of NM 28504. He was asked for clarification about the discrepancy of signatures. On October 5, 1976, the State Office received an affidavit from Rebecca J. Waters stating:

> * * * that due to her advanced age (85 years) and her inability at times to write her name legibly and plain that [she] did request and authorize her son to sign her name to a simultaneous oil or gas entry card which was submitted to the Bureau of Land Management in connection with the July 1976 drawing, which card was drawn for offer NM 28504.

Subsequently, the BLM issued its decision rejecting the lease offer for failure to comply with the requirements of 43 CFR 3102.6-1 1/ stating:

1/ This regulation provides:

"(a) Evidence required. (1) Except in the case where a member or a partner signs an offer on behalf of an association (as to which, see § 3102.3-1), or where an officer of a corporation signs an offer on behalf of the corporation (as to which, see § 3102.4-1), evidence [must be filed] of the authority of the attorney-in-fact or agent to sign the offer and lease, if the offer is signed by such attorney or agent on behalf of the offeror. Where such evidence has previously been filed in the same proper office where the offer is filed, a reference to the serial number of the record in which it has been filed, together with a statement by the attorney-in-fact or agent that such authority is still in effect will be accepted.

> * * * Rebecca J. Waters' offer was not accompanied by the evidence required above, whereby she authorized William D. Waters to sign the offer to lease (entry card) on her behalf nor was reference made as to the serial number of the record in which the authority had

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fn. 1 (continued)

"(2) If the offer is signed by an attorney in fact or agent, it shall be accompanied by separate statements over the signatures of the attorney-in-fact or agent and the offeror stating whether or not there is any agreement or understanding between them or with any other person, either oral or written, by which the attorney in fact or agent or such other person has received or is to receive any interest in the lease when issued, including royalty interest or interest in any operating agreement under the lease, including royalty interest or interest in any operating agreement under the lease, giving full details of the agreement or understanding if it is a verbal one. The statement must be accompanied by a copy of any such written agreement or understanding. If such an agreement or understanding exists, the statement of the attorney-in-fact or agent should set forth the citizenship of the attorney-in-fact or agent or other person and whether his direct and indirect interests in oil and gas leases, applications, and offers including options for such leases or interests therein exceed 246,080 acres in any one State, of which no more than 200,000 acres may be held under option, or exceeds the permissible acreage in Alaska as set forth in § 3101.1-5. The statement by the principal (offeror) may be filed within 15 days after the filing of the offer. This requirement does not apply in cases in which the attorney-in-fact or agent is a member of an unincorporated association (including a partnership), or is an officer of a corporation and has an interest in the offer or the lease to be issued solely by reason of the fact that he is a member of the association or a stockholder in the corporation.

"(3) If the power of attorney specifically limits the authority of the attorney in fact to file offers to lease for the sole and exclusive benefit of the principal and not in behalf of any other person in whole or in part, and grants specific authority to the attorney-in-fact to execute all statements of interest and of holdings in behalf of the principal and to execute all other statements required, or which may be required by the Acts and the regulations, and the principal agrees therein to be bound by such representations of the attorney-in-fact and waives any and all defenses which may be available to the principal to contest, negate or disaffirm the actions of the attorney-in-fact under the power of attorney, then the requirement that statements must be executed by the offeror will be dispensed with and such statements executed by the attorney-in-fact will be acceptable as compliance with the provisions of the regulations."

> been filed earlier. In the absence of the required evidence Rebecca J. Waters' offer is incomplete. * * *

Appellant contends in her appeal that it was not her intention, nor did she create an agency (attorney-in-fact) situation when she merely requested and directed her son to sign her name to the entry card in her presence. She argues that the decision to cause her signature to be placed on the entry card was solely hers, and the Actual signing was done in her presence subject to her control. Therefore, since no agency relationship was created, she contends, there was no need for evidence to accompany the offer pursuant to 43 CFR 3102.6-1.

The drawing entry card which appellant filed in the July 12, 1976, drawing contains instructions which, inter alia, provide that "compliance must also be made with the provisions of 43 CFR 3102." This regulation defines the qualifications of lessees, and 43 CFR 3102.6-1 more specifically sets forth the statements and evidence required when an attorney-in-fact or agent signs an offer on behalf of the applicant. If an offer is signed by an agent or attorney-in-fact it is well settled that the applicant cannot be considered "qualified," and the offer to lease drawn with first priority accepted, unless the statements required by 43 CFR 3102.6-1 have been filed with the drawing entry card. Southern Union Production Co., 22 IBLA 379 (1975); Husky Oil Co., A-30440 (October 27, 1965).

[1] However, the facts of this case raise the question whether the offeror's son has acted as an "agent" within the meaning of the regulation by merely signing his mother's name to the drawing entry card. Under the circumstances we think not. In a recent case, Evelyn Chambers, 27 IBLA 317, 325 (1976), the Board extensively considered the term "agent" as used in the regulation. We stated:

> The requirements and purposes of the regulation suggest an agency relationship akin to many business and commercial transactions where generally the terms "principal" and "agent" denote a fiduciary relationship with the agent possessing certain authority to act for the principal. See 2A C.J.S. Agency § 4 (1972). An "agent" may be distinguished from an "employee" in such contexts on the basis of the agent having authority to exercise discretion with respect to the transactions whereas a mere employee is allowed no discretion. See 53 AM. JUR. 2d, Master and Servant, § 3 (1970); 2A C.J.S. Agency § 16 (1972). Thus, an employee, or servant, while being an agent in the broadest sense of that term, may generally be understood to have no authority to act with discretion – only to perform manual or mechanical acts. Id.

> This distinction is clearly demonstrated in cases where an employee affixed his employer's signature to a document. In such circumstances where the employee is only performing a mechanical act at the direction of the employer, the employee is considered merely to be the "instrumentality" or "amanuensis" by which the employer is exercising the discretion in the transaction. The action is deemed that of the employer acting for himself.
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[2] In Chambers we held that the agency statements required by the regulation need not be filed. In the instant case the same result follows. The circumstances are even more persuasive that appellant's son was acting as a mere amanuensis or scribe when he signed the drawing entry card for his aged mother.

Appellant has stated that she had her son sign her name because of "her inability at times to write her name legibly and plain." She also has indicated that the signing was done at her direction, in her presence, within her control and was not intended as anything more than the act of making her signature. William Waters' mechanical act of signing his mother's name was clothed with no authority to take any other action for his mother regarding this lease. As such, we hold that their actions did not create an agency relationship as envisioned by 43 CFR 3102.6-1, and no further explanatory statements were required to be filed pursuant to that regulation. See also Arthur S. Watkins, 28 IBLA 79 (1976).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case is remanded for further action consistent with this opinion.

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Martin Ritvo
Administrative Judge

We concur:

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Joan B. Thompson
Administrative Judge

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Douglas E. Henriques
Administrative Judge